



**AMERICAN
STOCK EXCHANGE***
Equities Options ETFs

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December 14, 2001

Ms. Consuela Washington
Senior Minority Counsel
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, DC 20515

Dear Consuela:

In my November 14, 2001 letter to the GAO responding to its draft report on the American Stock Exchange's Listing Qualifications Department, I detailed certain changes management planned to propose to our Board of Governors. Consistent with that commitment, at its December 5th meeting the Board of Governors approved and I have submitted to the Securities and Exchange Commission the enclosed proposed rule changes. As my letter to the GAO states, we have had a number of conversations with the SEC – with both the Division of Market Regulation and the Office of Compliance Inspections and Examinations – and I believe that implementing the changes in this proposal (many of which we have already begun) will prove to bring to closure all outstanding open issues with the SEC regarding our listing qualifications function.

As you are probably aware, since being acquired by the NASD just over three years ago, the American Stock Exchange has undergone a number of significant and positive changes, not the least of which is substantial changes in management. Further, with the NASD's spin-off of Nasdaq, we have repatriated the American Stock Exchange listing qualification function back to New York from Nasdaq's operations in Rockville, MD.

With all of this substantially behind us, I would like the opportunity to meet with you to discuss in more detail the changes that have taken place over the last several years, the critical role the American Stock Exchange plays in the capital markets and our plans for the future and the challenges that lie ahead. As one of the nation's three primary exchanges, and the only equities auction market focused on small and mid-cap companies, we understand the significant obligation we have in ensuring the quality and integrity of our marketplace. In that regard, I am confident you and Congressman Dingell will be pleased with the steps we have already taken, as well as with our vision for the future.

I look forward to meeting with you at your earliest convenience.

Sincerely,

Michael

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4
Proposed Rule Change
by
AMERICAN STOCK EXCHANGE LLC

**Pursuant to Rule 19b-4 Under the
Securities Exchange Act of 1934**

1. Text of the Proposed Rule Change

(a) The American Stock Exchange LLC (the "Amex" or the "Exchange") proposes to amend the Amex Company Guide to adopt (i) new listing standards relating to the authority of the Amex Committee on Securities in respect of its review of initial listings; (ii) new procedures that would impose definitive time limits with respect to how long a non-compliant company can retain its listing; and (iii) substantive revisions to the initial and continued listing standards. The text of the proposed rule change is attached hereto as Exhibit A.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Exchange's Board of Governors on December 5, 2001. No further action by the Board or the membership of the Exchange is required to be taken.

(b) The following Exchange staff members are prepared to respond to questions and comments on the proposed rule change:

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Vice President, Listing Qualifications
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Claudia Crowley, Esq.
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3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange is proposing certain enhancements to its initial and continued listing program. The proposed changes, which are described below, are designed to provide issuers and investors greater clarity with respect to our listing qualification process, while preserving a degree of measured flexibility in our listing standards and procedures that will allow prudent business judgment to continue to play a role in determining whether a company is appropriate for listing on the Amex even if it does not fully meet our regular listing standards.

Initial Listing Approval Process

Currently the Exchange evaluates applicants for initial listing based on quantitative and qualitative guidelines, and may exercise discretion by approving a listing applicant that does not fully satisfy each of the stated numerical guidelines.¹ This discretion may be exercised in two ways. First, the Listing Qualifications management has the authority to approve a company for initial listing on the basis of its "substantial compliance" with the applicable guidelines. Second, the Amex Committee on Securities (the "Committee"), which is comprised of seasoned financial professionals, is authorized by the Amex Board of Governors to use its professional judgment in evaluating whether a particular issuer is appropriate for listing even though it does not fully comply with the numerical guidelines.

To provide issuers and investors with increased transparency and information regarding the manner in which securities are listed on the Amex, we are proposing the following:

1. Replace all references to listing "guidelines" with references to listing "standards."²
2. Revise and clarify the authority of the Listing Qualifications Department management to approve a company for initial listing, to provide that it may approve a company under the following circumstances:

¹ Section 101 of the Amex Company Guide provides that factors other than the specified guidelines will be considered in evaluating listing eligibility and an application may be approved even if the company does not meet all of the numerical guidelines.

² This change would also apply to references to continued listing guidelines.

- The company satisfies new "Initial Listing Standard 1" (existing "Regular Listing Guidelines").
- The company satisfies new "Initial Listing Standard 2" (existing "Alternate Listing Guidelines").
- The company satisfies new "Initial Listing Standard 3" (new "Market Capitalization" standard discussed below).
- The company satisfies new "Initial Listing Standard 4" (new "Currently Listed Securities" standard discussed below).

3. Adopt new quantitative minimum listing standards limiting the authority of the Committee in respect of its review of initial listings, such that the Committee would be able to approve a company that did not satisfy one of the regular initial listing standards only if (a) the company satisfies new alternative quantitative listing standards; (b) the Committee makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (c) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative standards. Thus, the Committee would not have authority to approve companies below the "floor" established by the new alternative quantitative listing standards specified below:

Alternative A

Stockholders' equity of at least \$3,000,000.

Pre-tax income of at least \$500,000 in its last fiscal year, or in two of its last three fiscal years.

Aggregate Market Value of Publicly Held Shares - \$2,000,000

Distribution - 400,000 shares publicly held and 600 public shareholders, or 800,000 shares publicly held and 300 public shareholders.

Price - Minimum market price of \$2 per share.

Alternative B

Stockholders' equity of at least \$3,000,000.

Aggregate Market Value of Publicly Held Shares - \$10,000,000

Distribution - 400,000 shares publicly held and 600 public shareholders, or 800,000 shares publicly held and 300 public shareholders.

History of Operations - Two years.

Price - Minimum market price of \$2 per share.

Continued Listing Process

To strengthen the Exchange's continued listing process, we are proposing to adopt revised procedures that would impose definitive time limits with respect to how long a company which has

fallen below the continued listing standards can remain listed pending corrective action. The new procedures would provide as follows:

- A company that falls out of compliance with the continued listing standards will be given an opportunity to submit a business plan to the Listing Qualifications Department detailing the action it proposes to take to bring it into compliance with continued listing standards within 18 months.
- If the Listing Qualifications Department management determines that the company has made a reasonable demonstration of an ability to regain compliance within 18 months, the plan will be accepted. The company would be able to continue its listing for up to 18 months if it issues a press release indicating that it is not in compliance with the continued listing standards and that it has been granted an 18 month extension.³
- The plan will be closely monitored during the extension period, and the company will be subject to delisting if it does not show progress consistent with its business plan, if further deterioration occurs or based on public interest concerns.
- At the conclusion of the extension period, the staff will initiate delisting proceedings if the company has not regained compliance with the continued listing standards.
- All staff delisting proceedings could be appealed to the Committee; however, the Committee will not have the authority to continue the company's listing unless it determines that the company has regained compliance with the continued listing standards.⁴

Other Changes

The Amex is also proposing to adopt certain new initial and continued listing standards that are necessary and appropriate for the Exchange to administer its listing qualifications function in a more fair, efficient and transparent manner.

With respect to initial listing, we are proposing to adopt two new sets of standards – a “market capitalization” standard and a “currently listed securities” standard – in addition to the two

³ If a company submits a plan that is not accepted, the staff would initiate delisting proceedings, which the company could appeal to the Committee. The Committee would have the authority to direct the Listing Qualifications Department management to accept the plan only if it finds that the plan does make a reasonable demonstration of an ability to regain compliance with the continued listing standards within 18 months.

⁴ Adverse Committee decisions could be appealed by the company to the Amex Adjudicatory Council whose decisions are subject to a call for review by the Amex Board of Governors. It should be noted that the Amex has pending before the Commission proposed revisions to the procedures applicable to the listing qualifications hearing process (Sec File No. SR-Amex-2001-47).

currently existing standards. Under the "market capitalization" standard, a company would be eligible for initial listing if it meets the following standards:

Shareholders' Equity – \$4 million
 Total Value of Market Capitalization - \$50 million
 Market Value of Public Float - \$15 million
 Public Float/Public Stockholders - \$500,00/800 or
 \$1 million/400 or
 \$500,000/400 (plus average daily volume of
 2,000 shares)

The "currently listed securities" standard would provide that a company which is currently listed on the New York Stock Exchange or Nasdaq National Market and fully satisfies the Amex continued listing standards will qualify for initial listing.

With respect to continued listing, the Amex is proposing to revise Section 1003(a)(iii) of the Company Guide to provide that a company will continue to qualify for listing even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, if it has stockholders' equity of at least \$6 million. Currently, a company that has sustained such losses is subject to delisting regardless of its stockholders' equity. We believe that this change is appropriate, in that a company which is able to maintain significant equity should be able to continue its listing notwithstanding five or more years of losses. In this regard, it should be noted that many development stage and research oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

In addition, the Amex is proposing to modify the market value of public float continued listing standard contained in Section 1003(b)(i)(C) of the Company Guide, to provide that a company will not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than \$1,000,000 for in excess of ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below \$1,000,000 for even one day.

In view of the volatility of the markets, we believe it is appropriate to evaluate this listing standard over a period of time.

(b) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed rule change will enable the Exchange to administer its listing program in a more fair, efficient and transparent manner that reflects the rapidly evolving changes in the economy and capital markets. Additionally, we believe that with respect to companies listed pursuant to the proposed Alternative Listing Standards, investors will derive the benefits inherent in an Amex listing of comprehensive regulation, transparent price discovery and trade reporting to facilitate best execution, and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

4. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission consideration of the proposed rule change specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed changes with respect to the continued listing process are similar to Section 802.02 of the New York Stock Exchange Listing Company Manual.

9. Exhibits

List of Exhibits Filed:

1. Form of Notice of Proposed Rule Change for publication in the Federal Register.
2. Not applicable.
3. Not applicable.
4. Not applicable.